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CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

No. 671

TOWN OF BELLEAIR, FLORIDA, DEBTOR,
A Municipal Corporation,
PETITIONER,

vs.

R. S. GROVES, ET AL, Creditors of the Said Town,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

O. K. REAVES,
Counsel for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES

TOWN OF BELLEAIR, FLORIDA, DEBTOR,
PETITIONER,

VS.

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RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Town of Belleair, Florida, a municipal corporation existing under the laws of Florida, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered December 29, 1942, affirming judgment of the District Court for the Southern District of Florida entered October 2, 1942 (R. 309).

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* Note: Italics ours unless otherwise stated.

Matters Involved

Vital questions arising under the Bankruptcy Act relating to composition of debts by taxing districts are involved.

The Town filed its petition under the Bankruptcy Act (R.1), with Plan of Composition proposing to refund *all* its bonds at 30 flat (R. 3). The plan was approved by creditors owning 68 per cent of the bonds and about 34½ percent in taxable value of the property of the Town. Objections were interposed by a few bondholders who do not own property in the Town, evidence was taken, and the District Judge wrote an opinion disapproving the plan upon the two grounds ("1" and "3") stated *infra* under the heading "Questions Presented" and other comparatively unimportant grounds (R. 268). An appeal from that order was dismissed upon the ground that it was not an appealable order (In re Town of Belleair, 127 F. (2) 279). Upon the remand of the cause, modifications of the plan and petition praying the approval thereof were filed (R. 289). The District Court granted a motion to strike said modifications, because they did not conform to the former opinion of the Court in the *two* respects herein set forth (R. 298), and declined to pass upon other features of the plan as amended because it was unnecessary. From the judgment dismissing the cause (R. 309), the case was again appealed and was affirmed.

In his findings, the District Judge expressly stated that the property-owning bondholders acted throughout *"in good faith"* and said *"to whom the Court ascribes no ulterior purpose"* (R. 306).

Jurisdictions of this Court

This Court has jurisdiction to review on writ of certiorari judgments of the circuit courts of appeals under Sec. 347, T. 28, USCA, and under Rule 38 of this Court.

Questions Presented

1. Whether the Circuit Court of Appeals erred in holding in effect that the Plan of Composition—proposing to refund *all* bonds at 30 flat—discriminates unfairly as between bondholders who are property owners in the Town and bondholders who are not property owners, solely because the one owns property and bonds and the other owns bonds only—no question of fraud, over-reaching, or fiduciary relation being involved—and where the percentage of bonds owned (about 68 per cent of the total) far exceeds the percentage of taxable property owned (about 34½ per cent of the total) by the group which owns bonds and property.

2. Whether in so holding, upon the authority of *American United Mutual Life Ins. Co. vs. City of Avon Park,* 311 *U. S.* 138, 61 *S. Ct.* 157, the Circuit Court of Appeals has not misconstrued and misapplied the Avon Park decision, to the detriment of petitioner.

3. Whether the Circuit Court of Appeals erred in affirming the judgment of the District Court (although without comment on this point), which held that $90,000 Water and Gas Bonds owned by the

Town, but pledged in trust to secure an unpaid balance of $18,000 loaned to the Town to redeem said bonds, should be counted in the amount of the Town's outstanding indebtedness and refunded; notwithstanding the plan proposes that said $18,000 obligation be not affected by the plan, that the $90,000 Water and Gas Bonds be canceled upon the payment of the $18,000 obligation, and that the Bankruptcy Court so order.

Reasons Relied on for the Allowance of the Writ

(1) The Circuit Court of Appeals has decided important questions of federal law which have not been, but should be, settled by this Court—a ground for review specifically named in Rule 38 and frequently recognized by this Court, as in *American United Mutual Life Ins. Co. vs. City of Avon Park,* 311 *U. S.* 138, 61 *S. Ct.* 157, where the Court said it granted the petition for certiorari *"in view of the importance of the problems in the administration of the composition and reorganization provisions of the Act."*

(2) The said decision of the Circuit Court of Appeals is in conflict with other decisions, in the comparable situation of stockholder-creditors in reorganization proceedings under Sec. 77 b, to the effect that a stockholder may become a creditor of a corporation; and when he does become a creditor he stands on the same footing, and has the same rights, as any other creditor. (*In re Indiana Central Telephone Co., District of Delaware,* 24 *F. Supp.*

342); and in conflict with the general rule of law that stockholder creditors have the same rights as other creditors (*First National Bank of Birmingham vs. Huddleston* (*Ala.*) 195 *So.* 755; *Pierce vs. Scott et al.* (*Fla.*), 195 *So.* 160; *Fletcher's Cyc. Corp., Permanent Ed., Vol.* 13, *Sec.* 5756), and is grounded upon the decision of this Court in the *Avon Park* case, 311 *U. S.* 138, whereas that case does not support said opinion but, on the contrary, holds that "composition under Bankruptcy Act authorizing composition of indebtedness of local taxing agencies envisage equality of treatment of creditors," notwithstanding which, the said judgment of the Circuit Court of Appeals discriminates between creditors, solely because one owns property in the Town and the other does not.

(3) The decision disregards the right given by statute to leave a well-secured obligation (in a different class) unaffected by the plan.

Prayer for the Writ

Wherefore, your petitioner prays that a writ of certiorari issue, as provided by the statutes of the United States, and that the judgment herein of said Circuit Court of Appeals for the Fifth Circuit be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated at Tampa, Florida, this 16th day of January, 1943.

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